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REPUBLICANISM

A THEORY OF FREEDOM AND GOVERNMENT

PHILIP PETTIT

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around them. There is nothing mean or narrow about republican ends or republican means. The project culminates quite naturally in the vision of a society where civility and trust are widespread.

REPUBLICANISM: A PROPOSITIONAL SUMMARY

Part I. Republican Freedom

Chapter 1. Before Negative and Positive Liberty

1. The negative conception of freedom as non-interference and the positive conception of freedom as self-mastery are not the only available ideals of liberty; a third alternative is the conception of freedom as non-domination which requires that no one is able to interfere on an arbitrary basis—at their pleasure—in the choices of the free person.

2. Contrary to established assumptions, the conception of freedom which was espoused in the long republican tradition was not the positive notion; in particular, it was not the notion of freedom as democratic self-mastery that Constant described as the liberty of the ancients.

3. Among the other two alternatives the republican conception endorsed the ideal of freedom as non-domination, not the ideal of freedom as non-interference. This is evident in the fact that it regarded all those who are subject to another's arbitrary will as unfree, even if the other does not actually interfere with them; there is no interference in such a case but there is a loss of liberty. The non-interfering master remains still a master and a source of domination.

4. That republicans saw freedom in this way is evident also in the fact that they did not think that a non-mastering and non-dominating interferer would compromise people's freedom; there is interference in such a case but there is no loss of liberty. They believed that it is possible for the law to be non-arbitrary and to represent a non-mastering interferer of this type.

5. As the conception of freedom as non-interference was introduced by Hobbes to defend Leviathan against republicans, so it was used to defend British rule in the North American colonies against the republican criticism that Parliament had arbitrary power over the colonists. The argument was that since all law is a form of interference all law reduces people's liberty and no legal system—not that of Leviathan, not that in the American colonies—can be dismissed as singularly inimical to freedom.

6. This new conception became respectable through the work of people like Bentham and Paley, who saw in it a way of conceiving of freedom that would allow even dominated agents like women and servants—so far as they did not suffer actual interference—to count as free.

7. Unlike traditional republicans, Bentham and Paley did not feel able to limit the constituency of citizens to mainstream, propertied males, and their inclusivism in this respect, which neo-republicans must also share, may explain why they regarded the republican ideal of freedom as too demanding.

Chapter 2. Liberty as Non-domination

1. Interference involves an intentional or quasi-intentional worsening of someone's choice situation: it may reduce the range of options available, or—in a lesser or greater measure—alter the expected pay-offs assigned to those options or determine which outcomes will result from which options and what actual pay-offs, therefore, will materialize.

2. Interference will occur on an arbitrary basis to the extent that it is controlled by the *arbitrium*—the will or judgement—of the interferer: to the extent, in particular, that it is not forced to track the interests and ideas of those who suffer the interference.

3. One party dominates another just so far as they have the capacity to interfere on an arbitrary basis in some of the other's choices; this domination may be more or less intense, depending on the severity and ease and arbitrariness of the interference available, and it may be more or less extensive, depending on the range of choices affected.

4. Where such domination occurs, it will tend to be a matter of common knowledge among relevant parties: each will know that the person is dominated, each will know that each knows this, and so on; the main exception is when the domination involves hidden manipulation.

5. Domination in the sense defined may occur without actual interference: it requires only the capacity for interference; and interference may occur without any domination: if the interference is not arbitrary then it will not dominate.

6. Non-domination involves the absence of domination in the presence of other people: it is a social ideal which requires that, though there are other people who might have been able to interfere with the person on an arbitrary basis, they are blocked from doing so.

7. Such non-domination may be advanced in a society either through people coming to have equal powers or through a legal regime stopping people from dominating one another without itself dominating anyone in turn.

8. When someone enjoys non-domination that will usually be a matter of common knowledge among relevant parties, so that non-domination has a subjective and intersubjective aspect: it is associated with tranquillity, in Montesquieu's phrase, and with the ability to look others in the eye.

9. The considerations that led Paley and the new liberal tradition to prefer the idea of freedom as non-interference are not decisive. Notwithstanding those allegations, there is no confusion of ends and means involved in the idea of freedom as security against arbitrary interference.

10. Notwithstanding those allegations, furthermore, freedom as non-domination comes in degrees both of intensity and extent. It can increase in intensity so far as compromising factors—the dominating presences that make people unfree—are reduced; it can increase in extent so far as conditioning influences—the natural, cultural or legal limitations that make people non-free but not unfree—are diminished.

11. Nothwithtanding those allegations, finally, freedom as non-domination is not an impossibly radical ideal; the substantial demands that it would make on the state look capable of being satisfied in our world, even if they were not capable of satisfaction in Paley's.

12. While freedom is defined as the antonym of domination, it should be noticed that domination does not exhaust the varieties of power; under other conceptions, indeed, non-domination is itself a form of power. Dominating power exists in virtue of an agent's capacity—exercised or not—for a certain influence over another person: specifically, in virtue of a capacity for an intentional and negative form of influence on what that other agent chooses.

Chapter 3. Non-domination as a Political Ideal

1. The superior value of non-domination needs to be established in a comparison with freedom as non-interference; we need not discuss the value of freedom as self-mastery or autonomy, since a state which is orientated to non-domination—assuming that it is enough to orientate the state in that way—will also facilitate the achievement of autonomy.

2. The superior attraction of freedom as non-domination comes out in the fact that its maximization would require the promotion of three benefits that the maximization of non-interference could ignore:

the absence of uncertainty, the absence of a need to defer strategically to the powerful, and the absence of a social subordination to others.

3. The connection between freedom as non-domination and these benefits is such that that freedom is a primary good, in John Rawls's sense; it is something that people have reason to want for themselves, no matter what else they want.

4. But freedom as non-domination is not the sort of good that can be left to people to pursue for themselves in a decentralized way; all the signs are that it is best pursued for each under the centralized, political action of all: it is best pursued via the state.

5. The political pursuit of freedom as non-domination should be attractive, not just for small homogeneous polities, but in the modern, pluralistic state; the admonitions of theory-weary, world-weary critics look like counsels of premature despair.

6. The natural way to cast freedom as non-domination is in the role of a value that the state should try to promote, not in the role of a constraint that it has to honour; this, moreover, is the way in which it is generally cast in the republican tradition: the tradition is consequentialist in character.

7. Two dimensions need to be taken into account in the promotion of freedom as non-domination—the intensity of non-domination and the extent of undominated choice—but some plausible assumptions mean that we should look to intensity first and extent only in the second place.

8. When non-domination is promoted by certain political and other institutions—when people are guarded against possibilities of arbitrary interference in their lives—that effect is not causally distinct from the institutions; like the immunity produced by antibodies in the blood, the non-domination is constituted by such institutional arrangements: it has an inherently institutional existence.

Chapter 4. Liberty, Equality, Community

1. An egalitarian good is one such that its maximum realization tends to occur at a point where it is more or less equally distributed across the relevant constituency; most established political values, including freedom as non-interference, are not egalitarian in this sense.

2. Freedom as non-domination is a significantly egalitarian good. Maximizing the non-domination that people enjoy requires that they enjoy that non-domination with equal intensity, even if it does not require in the same way—require independently of most empirical contingencies—that they enjoy it over exactly the same extent. The project is closely tied to the ideal of structural equality under which people are equally proof against domination, even if it is not similarly linked to equality in regard to resources and opportunities: that is, to material equality.

3. While the republican project of maximizing non-domination will allow that children and certain dependent adults have to be denied the standard range of undominated choice—that is necessary for their development or preservation—it should not tolerate any domination of such people; in this respect, it remains egalitarian.

4. A communitarian good is one that has both a social and a common character. It is social insofar as its realization requires that people are involved in mutual, intentional interaction; it is common insofar as it can be realized for one only if it is realized for some or all others.

5. Freedom as non-domination is a communitarian good. It can be realized only under an arrangement involving people in communal interaction. And it can be realized for one person only so far as it is realized for others in the vulnerability classes to which that person belongs: thus, a woman can be fully free in this sense only insofar as womanhood is not a badge of vulnerability, only insofar as all women are free.

6. The communitarian character of freedom as non-domination means that the freedom of a community is as basic a notion as the freedom of individuals, and that there is every reason, as communitarians require, why people should be able to identify with a state that promotes such freedom.

Part II. Republican Government

Chapter 5. Republican Aims: Causes and Policies

1. The republican philosophy of government, according to which the role of the state is to promote freedom as non-domination, has to be judged on John Rawls's method of reflective equilibrium, by reference to whether it gives us a picture of what the state should do and be which we can reflectively endorse.

2. Looking at what the republican state should do, the first thing to notice is that republicanism offers the state a pluralistic language in which to formulate the grievances it should seek to rectify: a language of freedom in which it is possible to make sense of a variety of claims that are made on the state.

3. The pluralism of the language shows up in the variety of causes of which it can offer a plausible articulation; these include, not just the familiar, conservative demand for order and predictability—and indeed private property—but also causes as various as environmentalism, feminism, socialism, and multiculturalism.

4. The republican language can achieve this degree of pluralism because the ideal of freedom as non-domination is inherently dynamic: it requires people's interests and ideas to be systematically tracked by the state, and so it leaves room for newly emerging or newly clarifying interests and ideas to force a reinterpretation of what such freedom requires.

5. When it comes to the specific policies that the ideal of freedom as non-domination would support—particularly, the policies it would support in combating the sort of domination associated with private *dominium* or resources—two things stand out: one, that the ideal is politically less sceptical than the ideal of freedom as non-intereference, since it recognizes the possibility of non-dominating government; and two, that it is socially more radical, since it requires not just the absence of arbitrary interference but the absence of capacities for arbitrary interference.

6. There are five large areas of policy-making—they bear, respectively on external defence, internal protection, personal independence, economic prosperity, and public life—and in all of these areas it is possible to discern the broad and often distinctive outlines of what a republican philosophy of government would require; but the requirements can only be detailed in the light of empirical information: republicanism is a research programme for policy-making, not a once-for-always blueprint.

Chapter 6. Republican Forms: Constitutionalism and Democracy

1. The republican state must not only seek to combat the effects of *dominium* in giving rise to domination; it must also guard against the domination that can be associated with the *imperium* of government; it must be concerned with what the state is as well as with what it does: with the forms as well as with the aims of the state.

2. If the way in which government operates is not to be subject to manipulation on an arbitrary basis, then there are a number of constitutionalist conditions which it must plausibly fulfil, and these have also been identified as important in the republican tradition.

3. A first is the empire-of-law condition, according to which government should operate by law, not case by case, and in particular by a sort of law that satisfies established constraints: by a sort of law that is general, non-retrospective, well-promulgated, precise, and so on.

4. A second is the dispersion-of-power constraint, according to which governmental power should be divided out among many hands; this supports the division of legislative, executive, and judicial functions but also other forms of dispersing power, as in bicameral and federal arrangements.

5. A third is the counter-majoritarian condition, according to which it should be made more rather than less difficult for majority will to change at least certain fundamental areas of law; this condition can be implemented in any of a number of ways, ranging from presumptions in favour of common law to constitutionally guaranteed constraints.

6. No matter how constrained a constitutionalist system is, there is always discretion in government: there has to be discretion among the legislators, of course, since they are the ones who make the laws; but there is also going to be discretion among those in the executive and judicial areas, since the interpretation of law is never fully constrained by legislation.

7. The only way for a republican regime to guarantee that this exercise of discretion is not hostile to the interests and ideas of people at large, or of some section of the community, is to introduce systematic possibilities for ordinary people to contest the doings of government.

8. This points us towards the ideal of a democracy based, not on the alleged consent of the people, but rather on the contestability by the people of everything that government does: the important thing to ensure is that governmental doings are fit to survive popular contestation, not that they are the product of popular will.

9. A contestatory democracy will have to be deliberative, requiring that decisions are based on considerations of allegedly common concern, if there is to be a systematically available basis for people to challenge what government does; the challenge may be that the considerations invoked are not appropriate, or that the initiative taken is not supported by them.

10. A contestatory democracy will also have to be inclusive, making room for people from every quarter to be able to press challenges against legislative or executive or judicial decisions; this requirement means that government will have to be representative of different sections of the population, that channels of contestation will have to be well established in the community, and that government will have to be guarded against the influence of business organizations and other powerful interests.

11. A contestatory democracy, finally, will have to be responsive to

the contestations that are brought against government decisions. There will have to be arrangements for giving a proper hearing—a proper hearing, not necessarily a popular hearing—to the complaints made in different areas; there will have to be decision-making procedures in place that enjoy general credibility; and in the event of that credibility failing, there will have to be possibilities of secession or ways of giving dissidents the special sort of status accorded traditionally to conscientious objectors.

12. This contestatory conception of democracy has priority over the accounts given of likely republican aims, and likely constitutionalist constraints, in the sense that those accounts should be seen as outlines of what is likely to pass muster in a contestatory democracy.

13. The emerging conception of democracy insists that the point is to create a testing environment of selection for the laws, rather than to have laws that are consensually designed. It connects with the emphasis in premodern republicanism on the virtue of having laws that have stood the test of time and that are part of an ancient constitution. And it connects also with the traditional view that the people have the right to challenge and resist laws that are arbitrary in character: that this indeed is what constitutes the people as sovereign.

14. The conception represents a stark alternative to the picture of interest-group pluralism that is so often invoked in the characterization of how democracy does or should work; it argues for a foregrounding of reason where that conception would rather see reason backgrounded.

Chapter 7. Checking the Republic

1. The constitutionalist and democratic institutions that have been described are designed to reduce the room for arbitrary decision-making in government—thus they would be necessary even if people were as public-spirited as angels—but we need also to consider what steps can be taken to place checks on those who run the republic, given the imperfections of human nature.

2. There is no particular difficulty for republicanism in guarding against problems of zealotry among government officials, since the pursuit of non-domination, unlike the pursuit of other values, would not give zealots much reason to take the law into their own hands.

3. But there is a need to guard against the corruptibility of human beings: even if most people are not actively corrupt, and are quite disposed to acknowledge and pursue what virtue requires, they are capable of being corrupted if they are exposed to powerful temptations.

4. The institutional resources available for guarding against corruptibility boil down to possibilities of sanctioning and screening: possibilities of punishing or rewarding what people do and possibilities of screening for the presence of suitable agents and options.

5. One strategy in institutional design is to start from the need to cope with the worst agents around—the so-called knaves—and to introduce sanctions that will serve even to control such antisocial types.

6. This deviant-centred strategy is subject to well-known difficulties, however, all of which derive from the fact that most people are not knaves—most are naturally responsive to legitimate demands—and that a pattern of sanctioning designed for knaves is liable to alienate such agents and reduce their degree of compliance.

7. An alternative strategy starts from the assumption that many people are not knaves and tries to build on that strength; it would support a screening for suitable agents; then a form of sanctioning designed to work with such non-knavish agents; and, finally, a structure of fall-back sanctioning that can cope with occasional knaves.

8. The most important element required under this complier-centred strategy is a form of sanctioning that will not alienate agents. One way of sanctioning agents without alienating them will be to have sanctions that are motivated independently of an assumption that the parties involved are knaves: to have sanctions that are needed on a neutral basis.

9. But the most striking possibility for a non-alienating form of sanctioning is asssociated with the reward of people's good opinion, and with the penalty of their bad opinion; such a regard-based form of sanctioning, which operates in an essentially non-intentional way—as if by an intangible hand—can discipline agents while communicating a positive image of their virtue.

10. When we consider the constitutionalist and democratic institutions that were introduced to reduce the scope for arbitrary will, it turns out that they often put in place independently motivated devices, even regard-based sanctions, that can serve an important regulatory role.

11. But over and beyond endorsing such devices, there is scope for considering how the complier-centred strategy might be systematically deployed in the design of regulatory controls on public officials; this would lead us to look for suitable screening devices in the first place, then for non-alienating sanctions to control the agents selected, and finally for sanctions suitable for those repeat offenders who fit the profile of knaves.

12. Political philosophy often goes for abstract and romantic themes, neglecting humdrum issues of the sort discussed here: neglecting, for example, issues to do with how best to organize committees. The ideal of freedom as non-domination suggests that pedestrian matters of institutional design are of the first importance; it argues for a gas-and-water works version of republicanism.

Chapter 8. Civilizing the Republic

1. The laws that advance the aims of the republic, institutionalize its forms, and establish regulatory controls need to be supported by republican civil norms—need to be supported by widespread civic virtue, by widespread civility—if they are to have any chance of being effective; the legal republic needs to become a civil reality.

2. That a pattern of behaviour is a civil norm in a certain group means that nearly every relevant party conforms to it, nearly every party approves of conformity and or disapproves of deviation, and this approval-cum-disapproval helps to promote or secure the behaviour; moreover, it usually means that those conditions are a matter of common knowledge in the group.

3. One reason that widespread civility is needed is that people can be assured of their non-domination only so far as others recognize normative reasons for respecting them, not just reasons connected to fear of legal sanctions.

4. Another is that if the republic is to be systematically sensitive to the interests and ideas of people—often newly emergent, newly articulated interests and ideas—then there have to be people who are virtuous enough to press appropriate claims; this applies both in the politics of difference and in the politics of common concerns.

5. A last reason why widespread civility is needed is that the public authorities cannot hope to identify and sanction all offences against republican laws and norms; ordinary people also have to be committed enough to perform in that role or to support the efforts of the authorities: ordinary people have to maintain the eternal vigilance that constitutes the price of republican liberty.

6. The most important thing for the state to do by way of encouraging the widespread civility that it needs for its own success is to establish the republican legitimacy of its laws in the public mind; and this it can best do by being an effective, contestatory democracy.

7. Widespread civility is likely to be supported by the intangible hand of regard-based sanctioning, since the honourable are destined in most circumstances to be the honoured, and the state must be careful

not to impose forms of sanctioning which might get in the way of that process.

8. There is a real danger that the state can do this, given the common neglect of the intangible hand: given the common assumption that the only controls available to government are the invisible hand of effective marketing and the iron hand of tough management.

9. Civility or civic virtue may not be so difficult of achievement as it often seems. It involves not just the internalization of public values and the disciplining of personal desires; given the communitarian nature of freedom as non-domination, it also involves identification with larger groups, even with the polity as a whole, and access to new and satisfying identities.

10. The achievement of widespread civility is equivalent to the achievement of a pattern of widespread personal trust—a pattern, supported by a belief in civility, of confident mutual reliance—and it means the establishment of a flourishing civil society.

11. The belief in the need for civility and trust is consistent with the republican emphasis on the necessity of vigilance. Republican vigilance involves going through the motions of personal distrust, with a view to keeping the authorities on their toes, and is consistent with maintaining a high level of trust.

12. Believing in the need for civility and trust is also consistent with valuing the independency associated with freedom as non-domination; the argument of this chapter is, paradoxically, that it is only when people behave in a manner that goes with widespread personal trust that freedom as non-domination can be achieved on a large scale.

13. Finally, there is no inconsistency in embracing the republican ideas presented here and believing that overtures of personal trust, even overtures that put the trustor at risk, can be positive and desirable initiatives; such acts presuppose the relative non-domination of the parties involved, they often serve further to promote a person's freedom as non-domination, and they can be particularly sensible means to that end, given a recognition of the power of the intangible hand.